

**MANDATE**

04-12396  
JSDC/MA  
T2010 J.

**United States Court of Appeals  
For the First Circuit**

No. 05-2773

JOHN J. CONNOLLY, JR.,

Petitioner, Appellant,

v.

UNITED STATES,

Respondent, Appellee.

Before

Torruella, Lynch and Howard,  
Circuit Judges.

**JUDGMENT**

**Entered: August 30, 2006**


After carefully reviewing the record, we deny petitioner's request for a certificate of appealability. We add only the following.

Insofar as petitioner seeks to rely on the decisions in Apprendi v. New Jersey, 530 U.S. 466 (2000), and United States v. Booker, 543 U.S. 220 (2005), his claim fails because neither case is retroactively applicable to cases on collateral review. Sepulveda v. United States, 330 F.3d 55, 61-63 (1st Cir. 2003) (Apprendi); Cirilo-Munoz v. United States, 404 F.3d 527, 532-33 (1st Cir. 2005) (Booker). His claim that the sentencing court erred by failing to conduct judicial fact finding has already been rejected by this court on direct review. United States v. Connolly, 341 F.3d 16 (1st Cir. 2003). Since his substantive claims are without merit, petitioner could not have suffered any cognizable prejudice from any alleged procedural errors below.

The request for a certificate of appealability is denied and the appeal is terminated.

**Certified and Issued as Mandate  
under Fed. R. App. P. 41.**

**Richard Cushing Donovan, Clerk**

  
**Deputy Clerk**

**Date:** 10/23/06

By the Court:

Richard Cushing Donovan, Clerk.

**MARGARET CARTER**

By: \_\_\_\_\_  
Chief Deputy Clerk.

[cc: E. Peter Mullane, Esq., Edward J Lonergan, Esq.,  
John H. Durham, AUSA, William J. Nardini, AUSA,  
John J. Connolly, Jr.]